

## Message Text

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ACTION ARA-10

INFO OCT-01 IO-10 ISO-00 CIAE-00 DODE-00 PM-03 H-02 INR-07

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R 022245Z MAY 75

FM AMEMBASSY SANTIAGO

TO SECSTATE WASHDC 3163

INFO USMISSION USUN NEW YORK

USMISSION GENEVA

C O N F I D E N T I A L SANTIAGO 3084

EO 11652: GDS

TAGS: CI, PINS

SUBJ: NEW DECREE ON INTERNAL SECURITY

REF: SANTIAGO 3043

1. SUMMARY. DETAILED STUDY OF TEXT OF DECREE LAW ON NATIONAL SECURITY SIGNED BY PRES PINOCHET APRIL 30 REVEALS LITTLE SUBSTANTIVE CHANGE FROM LEGAL SITUATION CONCERNING NATIONAL EMERGENCY AND STATUS OF DETAINEES WHICH HAS EXISTED SINCE SEPT 1973 COUP. WHILE AUTHORITY OF PRESIDENT UNDER CONSTITUTION TO DETAIN PERSONS DURING EMERGENCY PERIODS IS NOT ALTERED, SECURITY AUTHORITIES THEMSELVES WILL NOW BE REQUIRED TO NOTIFY FAMILIES OF DETAINEES WITHIN 48 HOURS AND RELEASE OR CHARGE THEM WITHIN FIVE DAYS. "ILLGITIMATE PRESSURES" ON DETAINEES ARE PROHIBITED LEGALLY RATHER THAN BY STATED POLICY.

2. SPECIAL PROVISIONS OF DL LEAVE ALL SIGNIFICANT OFFENSES AGAINST BROADLY DEFINED "NATIONAL SECURITY" SUBJECT TO MILITARY TRIBUNALS OPERATING UNDER TIME OF WAR RULES, AS LONG AS STATE OF SIEGE IS IN EFFECT. DL CLARIFIES UNCERTAINTY AS TO ROLE OF MILITARY TRIBUNALS IN LOWER GRADES OF STATE OF SIEGE: MILITARY TRIBUNALS WILL CONTINUE TO HAVE JURISDICTION AS IN TIME OF WAR OVER RANGE OF OFFENSES SO BROADLY DESCRIBED IN OTHER LEGISLATION AS TO

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ALLOW GOC EFFECTIVE DISCRETION TO CONTINUE TO TRY MOST "POLITICAL"

OFFENSES UNDER "TIME OF WAR" RULES.

3. AS WITH PREVIOUS GOC STATEMENTS ON NATIONAL SECURITY, TEST WILL BE WHAT GOC DOES, NOT MERELY WHAT IT SAYS. STAGE MAY NOW BE SET FOR REDUCTION IN STATE OF SIEGE TO LOWER DEGREE, AS STATE OF WAR WAS REDUCED TO STATE OF SIEGE BY GOC ON SEPT 11, 1974. END SUMMARY.

4. NEW DECREE LAW (L) ON NATIONAL SECURITY, WHICH HAS NOT YET APPEARED IN "DIARIO OFICIAL," WAS DISTRIBUTED TO SELECT AUDIENCE AT SIGNATURE CEREMONY APRIL 30 AND PRINTED IN FULL IN "EL MERCURIO" ON MAY 2. PREAMBLE POINTS OUT THAT GOC WISHES TO BRING TOGETHER LEGISLATION ON NATIONAL SECURITY NOW SCATTERED IN LAWS ISSUED BOTH PRIOR TO AND SINCE SEPT 1973 COUP. AS NOTED REFTTEL, DEFINITIVE CODE IS STILL IN PREPARATION, AND PRESENT DL IS TEMPORARY MEASURE.

5. PURPOSE OF DL, ACCORDING TO PREAMBLE, IS TO PROVIDE CERTAIN GUIDELINES ON PROTECTING RIGHTS OF INDIVIDUAL WITHOUT PREJUDICING AUTHORITY PRESIDENT HAS ALWAYS HAD UNDER CONSTITUTION UNDER VARIOUS STATES OF EMERGENCY TO PRESERVE NATIONAL SECURITY. AUTHORITY OF GOC TO DETAIN PERSONS DURING STATES OF EMERGENCY IS SPECIFICALLY RESTATED. HOWEVER, LENGTH OF TIME "SPECIAL TECHNICAL-PROFESSIONAL ORGANISMS" (E.G. NATIONAL INTELLIGENCE DIRECTORATE--\$,-) WHICH SERVE PRESIDENT IN EXERCISE OF HIS EMERGENCY AUTHORITY MAY HOLD PERSON WITHOUT CHARGE IS NOW RESTRICTED TO FIVE DAYS, AND DETAINEE MUST THEN EITHER BE FREED OR "PLACED AT DISPOSITION OF" APPROPRIATE COURTS, OR OF MIN OF INTERIOR IF PERSON IS TO BE HELD UNDER STATE OF SIEGE WITHOUT SPECIFIC CHARGE (ARTICLE 1). FAMILY OF DETAINEE MUST BE NOTIFIED OF DETENTION WITHIN 48 HOURS. (NOTE: UNDER PREVIOUS RULES, DINA AND OTHER SECURITY AGENCIES HAD 72 HOURS IN WHICH TO NOTIFY NATIONAL SECRETARIAT FOR DETAINEES (SENDET) OF STATUS OF DETAINEE (SEE SANTIAGO 196); THERE WAS NO REQUIREMENT THAT FAMILIES BE NOTIFIED.) "APPLICATION OF ILLEGITIMATE PRESSURES" TO DETAINEES IS PUNISHABLE, BUT TERM "OLLEGITIMATE PRESSURES" IS NOT DEFINED.

6. ARTS 2 AND 3 DESIGNATE AS OFFENSES POSSESSION OF ENCODED DOCUMENTS WHICH CANNOT BE SATISFACTORILY EXPLAINED TO AUTHORITIES, AND BROADENS OFFENSE TO INCLUDE CARRYING OR TRANSMITTING ANY "OR-CONFIDENTIAL

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DER, INSTRUCTION, INFORMATION OR COMMUNICATION" RELATED TO A NATIONAL SECURITY OFFENSE. HIDING OR ASSISTING A KNOWN FUGITIVE IS ALSO NATIONAL SECURITY CRIME. ART 4 MAKES THESE OFFENSES SUBJECT TO MILITARY TRIBUNALS AS IN TIME OF WAR (E.E. NO CIVILIAN REVIE AND TENDING TOWARD HARSHER TREATMENT).

7. DL THEN BECOMES MORE DIFFICULT TO FOLLOW. CERTAIN OFFENSES ARE ADDED TO THOSE CONTEMPLATED IN NATIONAL SECURITY LAW OF 1958, AND

THAT LAW IS AMENDED TO INCREASE PENALTIES FOR SOME OFFENSES AND PLACE THEM UNDER MILITARY TRIBUNALS AS IN TIME OF WAR. SPECIFICALLY, CARRYING OUTLAWED PROPAGANDA MATERIAL IS DENOMINATED AN OFFENSE, AND KIDNAPPING RELATED TO NATIONAL SECURITY IS PUNISHED AS NATIONAL SECURITY OFFENSE AFTER VICTIM HAS BEEN HELD ONLY FIVE DAYS (INSTEAD OF TEN IN OLD LAW). NATIONAL SECURITY OFFENSES BY COMMUNICATIONS MEDIA, PUNISHABLE BY SIX DAYS OF SUSPENSION UNDER OLD LAW, ARE NOW SANCTIONED BY TEN DAYS SUSPENSION. ANTI-HIJACKING LAW IS STRENGTHENED.

8. DL FOR FIRST TIME MAKES MORE CLEAR LEGAL STATUS IN VARIOUS LEVELS OF STATE OF SIEGE (SANTIAGO A-181, SPT 25, 1974). DL 640 OF SEPT 10, 1974, WHICH ESTABLISHED NEW SUBDIVISIONS OF STATE OF SIEGE, IS AMENDED TO PROVIDE THAT IN FIRST TWO STAGES OF STATE OF SIEGE -- "INTERNAL OR EXTERNAL WAR" AND "INTERNAL DEFENSE" (PRESENT STAGE) -- MILITARY TRIBUNALS WILL CONTINUE TO FUNCTION AS IN TIME OF WAR, I.E. WITHOUT CIVILIAN REVIEW. IN THIRD AND FOURTH STAGES OF STATE OF SIEGE -- "INTERNAL SECURITY" AND "SIMPLE INTERNAL COMMOTION" -- MILITARY TRIBUNALS ARE TO FUNCTION AS IN TIME OF PEACE (I.E. WITH CIVILIAN REVIEW, ETC.), EXCEPT FOR CERTAIN OFFENSES LISTED IN NOW AMENDED OLD SECURITY LAW. THESE OFFENSES IN TURN ARE BROADLY DRAWN OR HAVE BEEN AMENDED SINCE COUP, AND COVER MOST ACTS THAT COULD BE CONCEIVED AS RESISTANCE TO GOC, OR PROPAGANDA EFFORTS AGAINST IT; APPARENTLY THEY WILL CONTINUE TO BE JUDGED BY MILITARY TRIBUNALS AS IN TIME OF WAR.

9. FINAL ARTICLE OF DL DESIGNATES AS NATIONAL SECURITY CRIMES ALL VIOLATIONS OF DL 77, WHICH OUTLAWED "MARXISM" AND THE UNIDAD POPULAR PARTIES, AND DL'S 81 AND 604, WHICH TREATED CLANDESTINE ENTRY INTO CHILE, AS WELL AS VIOLATIONS OF HIJACKING AND ARMS CONTROL LAWS.

10. COMMENT: NEW DL IS TECHNICALLY NOT IN EFFECT UNTIL PUBLISHED.  
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ED IN DIARIO OFICIAL; THIS IS EXPECTED MOMENTARILY. INTRODUCTION IN PUBLIC CEREMONY (REFTEL) AND PRES PINOCHET'S REMARKS AS CITED BY PRESS CONVEY GOC DESIRE TO EMPHASIZE ITS RESPECT FOR HUMAN RIGHTS. PINOCHET STATED HE DESIRED TO AVOID ARBITRARY USE OF AUTHORITY AND OTHER ABUSES, WHICH GOC "HAS NEVER APPROVED AND HAS PUNISHED WHEN ISOLATED CASES OF ABUSE HAVE OCCURRED". NEITHER PINOCHET NOR PRESS NOTED THAT DL NOW PROVIDES INCREASED PENALTIES IN SOME CASES, SUCH AS OFFENSES BY COMMUNICATIONS MEDIA, OR THAT IT NOW MAKES CLEAR THAT FOR PRACTICAL PURPOSES ALMOST ALL "NATIONAL SECURITY OFFENSES" MAY CONTINUE TO BE JUDGED BY MILITARY TRIBUNALS ACTING UNDER TIME OF WAR RULES UNDER ANY LEVEL OF STATE OF SIEGE.

11. PAST EXPERIENCE HAS INDICATED THAT GOC ANNOUNCEMENTS IN GENERAL AREA OF NATIONAL SECURITY AND HUMAN RIGHTS MUST BE EXAMINED

IN LIGHT OF WHAT GOC ACTUALLY DOES, RATHER THAN WHAT IT SAYS. REDUCTION FROM STATE OF WAR TO STATE OF SIEGE ON SEPT 11, 1974, WAS INITIALLY THOUGHT TO SIGNAL A SUBSTANTIVE CHANGE; IT WAS SOON SEEN TO BE COSMETIC. PINOCHET HAS IN THE PAST (JAN 1974 "SECRET" CIRCULAR) MADE KNOWN ORDER TO SECURITY AGENCIES TO CEASE TORTURE, BUT TORTURE APPARENTLY CONTINUES. SECURITY AGENCIES UNDER OLD REGULATION WERE REQUIRED TO REPORT ON STATUS OF DETAINEES WITHIN 72 HOURS TO SENDET; IT IS APPARENT THAT MANY DETENTIONS HAVE NOT BEEN REPORTED ON TIME OR AT ALL. DINA, IN PARTICULAR, HAS APPARENTLY ARRESTED MANY PERSONS WITHOUT IDENTIFYING ITSELF AND SIMPLY DENIED ANY KNOWLEDGE OF THE MATTER. THERE IS NO KNOWN RULE AS TO WHAT CONSTITUTES "ILLEGITIMATE PRESSURE", AND THERE IS SOME INDICATION THAT SECURITY AUTHORITIES DO NOT CONSIDER AS TORTURE MALTREATMENT NOT PERMANENTLY HARMFUL TO THE VICTIM. DL IMPLIES IMPROVEMENT IN GOC PERFORMANCE IN HUMAN RIGHTS AREA, BUT ONLY EXPERIENCE WILL SHOW WHETHER IMPROVEMENTS RESULT. WE WILL SEEK COMMENT FROM APPROPRIATE GOC OFFICIALS AND FROM INDEPENDENT LAWYERS.

12. IT WOULD NOW BE LOGICAL IN NEAR FUTURE FOR GOC TO REDUCE LEVEL OF STATE OF SIEGE FROM SECOND TO THIRD OR EVEN FOURTH STAGE. WITH CLARIFICATION THIS NEW DL MAKES IN THOSE STAGES, IT CAN BE SEEN THAT ACTUAL LEGAL EFFECT ON HUMAN RIGHTS OF CHANGE IN LEVEL OF STATE OF SIEGE WILL BE VERY LIMITED OR NIL, ALTHOUGH IT MIGHT HAVE SOME FAVORABLE PROPAGANDA EFFECT. EVEN IF STATE OF SIEGE WERE ENTIRELY REMOVED, STATE OF EMERGENCY WOULD PRESUMABLY REMAIN. CONFIDENTIAL

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WE ARE NOT CLEAR AS TO WHAT THE PICTURE WOULD BE THEN, BUT IT DOES NOT APPEAR THAT GOC INTENDS TO MOOVE TO THIS LEVEL SOON. ALSO UNCLEAR FROM TEXT WHAT BALANCE BETWEEN MILITARY AND CIVILIAN COURT JURISDICTION WOULD BE IN ABSENCE OF STATE OF EMERGENCY

13. TEXT OF DL BEING POUCHED TO ARA/BC.  
POPPER

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## Message Attributes

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